

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco**M e m o r a n d u m**

Date: April 20, 2004

To: The Commission
(Meeting of April 22, 2004)

From: Alan LoFaso, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2006 (Nuñez)** Electrical restructuring: Reliable Electric Service
Act of 2004
As Amended April 12, 2004

Legislative Subcommittee Recommendation: Oppose, unless amended.

Summary: This bill would provide for a core/noncore retail electric structure and require specified Commission actions intended to guarantee electric utility cost-recovery for investment in electric generation and transmission infrastructure.

Digest: Existing law, P.U. Code secs. 451 et. seq. provides for rights and obligations of public utilities, including the obligation to serve and the requirement that charges be just and reasonable. The takings clause of the Fifth Amendment of the U.S. Constitution “limits the power of the states to regulate, control, or fix prices that producers charge consumers for goods or services.” 20th Century Ins. Co. v. Garamendi, 8 Cal. 4th 216, 292 (1994).) An unlawful taking or confiscation does not occur unless a regulation or rate is unjust and unreasonable, and whether a regulation or rate is just and reasonable depends on a balancing of the interests of the regulated entity providing the services and the interests of the consumers of such services.¹ Federal Power Comm’n v. Hope Natural Gas, 320 U.S. 591, 601 (1944); Duquesne Light Co. v. Barasch, 488 U.S. 299, 307 (1989).

Existing law, P.U. Code sec. 454.5, enacted by Chapter 835, Statutes of 2002 (AB 57, Wright) and Chapter 850, Statutes of 2002 (SB 1976, Torlakson), provides a framework

¹ See Duquesne Light, 488 U.S. at 314 (stating: “[R]eturn to the equity owner should be commensurate with returns on investments in other enterprises having corresponding risks”) (quoting FPC v. Hope Natural Gas Co., 320 U.S. 591, 603.); see also Id. at 314-15 (“A public utility is entitled to such rates as will permit it to earn a return . . . equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties”) (quoting Bluefield Water Works & Improvement Co. v. Public Service Comm’n of West Virginia, 262 U.S. 679, 692-693 (1923)).

for procurement by electrical corporations (ECs) and imposes certain requirements for the Commission's approval of EC's procurement plans, such as the elimination of after-the-fact reasonableness reviews and the required recovery of procurement costs.

Existing law, P.U. Code secs. 1001 et. seq., requires electric utilities to obtain a Certificate of Public Convenience and Necessity (CPCN) from the Commission to construct a "line, plant, or system, or of any extension thereof." Existing law, P.U. Code sec. 1002 (a)(1), (4), requires the Commission to consider certain factors as a basis for granting the certificate, including "community values" and "influence on environment". Existing law further requires the Commission to assess the environmental effects of these facilities pursuant to the California Environmental Quality Act (CEQA), Public Resources Code secs. 21000 et. seq.

Existing law, P.U. Code sec. 360 et. seq., provides for the right of retail end use customers to acquire electric generation service from providers other than the existing EC (direct access), specified nonbypassable charges applicable to those customers, and the right of end use customers to receive default service from the existing EC.

Existing law, Water Code sec. 80110, enacted by Chapter 4, Statutes of 2001 (1st Ex. Sess.) (AB 1X, Keeley), required the Commission to suspend direct transactions until the end of the duration of all Department of Water Resources (DWR) power purchase contracts. Pursuant to this statute, the Commission suspended direct access beginning on September 20, 2001 in D.01-09-060 (as modified in D.01-10-036).

Existing law, Chapter 838, Statutes of 2002 (AB 117, Migden), authorizes cities and counties to serve their residents as "community choice aggregators" (CCAs) and affirms the Commission's authority to determine the "fair share" of cost responsibility to be borne by direct access customers served by DWR purchases prior to the suspension of direct access. Existing law further requires CCA customers to pay cost responsibility surcharges, encompassing the following:

- (a) A charge equivalent to the charge imposed by the Commission to recover DWR bond related costs;
- (b) DWR's estimated net unavoidable power purchase contract costs, determined by the Commission;
- (c) EC's unrecovered past undercollection attributable to those customers; and
- (d) ECs' estimated net unavoidable power purchase contracts costs attributable to those customers. (P.U. Code sec. 366.2 (e), (f).)

This bill would make various legislative findings and declarations in support of an adequate and reliable supply of electricity, a diverse integrated resource portfolio, a stable and predictable customer base to avoid stranded costs, and the need to assure that reasonable costs and investments are recovered in rates.

This bill would provide for a "core and noncore electric service model" ("CNC model") in which an EC would be required to provide bundled electric service to core customers defined as less than 500 kW maximum peak demand. This bill would authorize direct

transactions for noncore customers with maximum peak demands of 500 kW or greater.

This bill would reaffirm an EC's sec. 451 obligation to provide electric service to its customers, as defined, to include, among other things, energy efficiency/demand response resources and billing/metering, while excluding direct access customers' from that obligation.

This bill would make various legislative findings and declarations regarding a properly structured CNC model and require the Commission to prevent any cost shifting to core customers to ensure that "core customers are indifferent to a noncore customer's election to purchase from an EC or enter into a direct transaction."

This bill would require the Commission to adopt rules and regulations by December 31, 2005, to implement a CNC model to:

- ✓ Require that core customer and noncore customers not electing direct access (DA) receive EC service on a cost-of-service basis;
- ✓ Authorize noncore customers to elect to enter DA transactions with nonutility electric service providers (ESPs);
- ✓ Authorize current DA customers with maximum peak loads of less than 500 kw to either continue as direct access customers or elect service from the EC, according to Commission-developed rules;
- ✓ Provide a 5-year "rolling commitment" for noncore customers not electing DA to service;
- ✓ Establish terms for default service for non core customers electing for direct transactions with a safe harbor for a duration to be established by the Commission that require noncore customers using the safe harbor to pay either the marginal price of spot electricity or the tariffed rate for bundled customers, whichever is higher;
- ✓ Prevent any cost shifting to core customers from noncore customers decision to enter DA transactions;
- ✓ Continue noncore customers' requirement to pay cost responsibility attributed to CCAs (see above);
- ✓ Defer new DA elections until the Commission approves a cost recovery mechanism to ensure that new elections will not cause under recovery of costs;
- ✓ Ensure no cost shifting or stranded investments from CCA elections; and
- ✓ Require ESPs to be fully responsible for resource adequacy requirements for their share of load.

This bill would require all load serving entities, including electric service providers (ESPs) and community choice aggregators (CCAs), to be subject to the same resource adequacy requirements as ECs, while excluding publicly-owned utilities (POUs) from this requirement. This bill would further require the Commission to establish resource adequacy requirements to be implemented and enforced by the Independent System Operator (ISO).

This bill would direct the Commission to authorize ECs to provide efficient, cost-effective resources, as specified, consistent with EC long-term resource plans (LTRPs), filed pursuant to AB 57 and direct the Commission to, after public hearing, approve and maintain just and reasonable rates to ensure that the EC recovers its reasonable investments, including an opportunity to recover a reasonable return over the life of the investments; however, current statutes authorizing disallowances for unreasonable error or cost caps would still apply. This bill would further require the Commission to approve, after public hearing, review and approve a LTRP, consistent with AB 57, including reasonable utility-filed revisions.

This bill would require ECs to prepare an LTRP consistent with AB 57, including demand and supply forecasts for 5-10- and 15-year periods, and ensure adequate resources to serve the utilities to the EC's customers, as defined. This bill would require the EC's LTRP's to provide for:

- Investments in all energy efficiency and demand response resources, as specified;
- Investments in necessary generation resources, as specified;
- Distributed generation (DG) (optionally) to improve system reliability, if the EC makes specified findings;
- Ultra clean DG, as defined; and
- Resource adequacy requirements to meet 100 percent of annual peak demand plus Commission-determined operating and planning reserve margins for load served by the EC, specifically excluding direct access customers' load.

This bill would require EC's procurement plans, approved pursuant to AB 57, to ensure that selection process for resources to meet resource adequacy requirements achieve "best value" for ratepayers by considering specified criteria. Additionally, this bill would further require ECs to:

- Manage a diverse portfolio to meet resource adequacy requirements that achieves "best value" by combining the benefits of a competitive wholesale market and the stability of cost of service regulation; and
- Conduct competitive solicitations for non-utility generation to meet resource adequacy requirements that provide "best value", consistent with AB 57;

This bill would require the Commission to make a finding that any utility-owned or non-utility generation, approved pursuant to AB 57 to meet resource adequacy requirements, is reasonably priced relative to an unspecified market-based benchmark prior to approving any certificate of public convenience and necessity (CPCN) or bilateral contract.

This bill would further require ECs to invest in new and expanded transmission facilities to ensure efficient and reliable operation of the grid. This bill would also provide that ISO determinations of need for transmission to meet reliability or economic efficiency shall be conclusive for purposes of determining whether to issue a CPCN.

This bill would require the Commission to adopt rules and regulations.

Analysis: The Subcommittee discussed the bill and identified the following concerns regarding AB 2006, which would be required to be addressed; otherwise the Subcommittee recommends that the Commission oppose the measure:

AB 2006 may bias future resource procurement against cost-effective energy efficiency.

The Commission, along with the Energy Commission and Power Authority, last year adopted an aggressive Energy Action Plan to coordinate the work of our three agencies and maintain a united, statewide, environmentally sound policy direction. The Energy Action Plan places cost-effective energy efficiency first in the “loading order,” ahead of new generation, in meeting customer loads.

Although AB 2006 recognizes the importance of energy efficiency, the requirement in Section 400.10(b) that energy efficiency investments must “offer equivalent or better system reliability, equivalent or better environmental improvements, and equivalent or lower costs to ratepayers than supply alternatives” is too-stringent of a test and may have the effect of restricting the Commission’s ability to choose energy efficiency investments. In principle, energy efficiency cannot be compared on a one-to-one basis with supply-side investments. For example, because education programs cannot be measured in kilowatt-hours saved, the ability to spread the message of energy efficiency and its importance will be lost.

Indeed, it has been Commission’s experience that *any* direct comparison of energy efficiency and supply-side investments is difficult at best, and subject to dispute. This has not prevented the Commission in the past from approving energy efficiency programs that are very widely accepted as cost-effective. Furthermore, if the goal is to achieve a diverse, long-term portfolio, it is not prudent to prejudice the viability of one resource over another.

AB 2006 limits the Commission’s ability to protect ratepayers from unreasonable costs over time.

Section 400.5 would require the Commission to impose all costs on ratepayers submitted in utilities’ procurement plans with no ongoing review.

Existing law and Commission action currently provide for short-, medium-, and long-term procurement plans. However, AB 2006 would authorize utilities to receive guaranteed cost-recovery from ratepayers according to a long-term resource plan that the Commission would be required to approve. Once approved, a utility would be entitled to receive ratepayer funds to fulfill the plan, with no additional opportunity for Commission review during the course of the long-term plan. Moreover, Section 400.10(d) would require Commission approval of utility distributed generation improvements if the utility finds them to be appropriate, not the Commission.

AB 2006's effect would be a statutory license to impose costs on ratepayers—risk-free to utilities—with little oversight during the implementation of the procurement plan.

AB 2006 is unclear whether the Commission will have the flexibility to ensure a truly competitive procurement selection processes.

Section 400.15 would require the Commission to approve utility-recommended procurement contracts based on competitive solicitations by the utilities.

This inflexibility would limit the Commission's ability to require specific requirements in competitive processes to limit utilities' monopsony power in the procurement process or to order any aspect of a competitive solicitation to be managed or supervised by any other party, including oversight by the Commission itself.

AB 2006 should not limit the Commission's future ratemaking flexibility for core customers.

Section 400.21(a) would direct that core customers receive service "on a cost-of-service basis".

The Commission (along with many regulators throughout the world) has since the 1980s adopted a number of ratemaking methods that differ from traditional cost-of-service, where doing so was found to offer the ratepayers benefits like lower rates, more diversity of service offerings, and higher reliability and customer satisfaction. This section may preclude the Commission's use of such innovative ratemaking in the future.

AB 2006 is unclear on the appropriate roles of the ISO and the Commission with respect to enforcing resource adequacy.

Section 400.22(b) would direct the ISO to "enforce . . . resource adequacy requirements . . . on all load serving entities."

The Commission is the state agency with responsibility for regulating the electric utilities, and is in fact directed by AB 2006 to approve long-term utility resource plans. AB 2006 should make clear that the Commission enforces resource adequacy requirements on the regulated utilities. It is the appropriate responsibility of the Commission to enforce statutory mandates on the utilities. Moreover, further clarity is needed regarding the means by which the ISO would enforce these requirements for other load-serving entities. The Commission's recent procurement decision (D.) 04-01-050 would address this problem by uniform enforcement of load-serving entities' resource adequacy by the Commission.

AB 2006 presupposes the outcome of our transmission rulemaking (R.) 04-01-026 to reform the transmission approval process.

The proposed transmission reforms in Section 400.18 reflect a direction that the Commission has proposed in a new proceeding opened in January of 2004, which endeavors to revise the Commission's current rules to provide a more streamlined and efficient transmission assessment process. Moreover, the scope of AB 2006's conclusive presumption is vague regarding the appropriate roles of the Commission and the ISO.

AB 2006 should not exclude Municipal utilities from the resource adequacy requirement.

Section 400.22(b) would exclude municipal utilities from the definition of "load-serving entity", thus exempting municipal utilities from the resource adequacy requirements ensured by AB 2006.

Municipal utilities should not be exempted from resource adequacy requirements. Their customers deserve service no less reliable than the rest of the state. Moreover, exempting any group of load-serving entities from the resource adequacy requirement will have the effect of increasing the burden on those remaining customers whose load-serving entities are subject to the requirements.

The 500 KW minimum size requirement for non-core status is too high.

Section 400.21(i) would limit Non-core customers to customers with a maximum peak load of 500KW at one meter. Only the very largest utility customers could meet this requirement, denying the benefits of non-core status to many who might benefit. At a minimum, **AB 2006 should permit customers to aggregate their loads** at different sites to qualify for non-core status. For example, restaurant and grocery chains are very sophisticated consumers of electricity and could benefit from the possibility of non-core status, but may not meet the 500 KW minimum requirement at any one location.

The 5-year rolling commitment to the utility for non-core customers who choose not to enter into direct transactions does not reflect market realities.

Section 400.21(c) would provide that non-core customers not choosing direct transactions have a five-year rolling commitment to the utility.

The measure would lock in non-core customers' choice and provide an unreasonably long notice period to enter or return to the competitive market. So long as measures to prevent cost-shifting are in place, core customers may have little to fear in non-core customers' choosing to leave utility bundled service. The five-year rolling commitment to the utility will only discourage non-core customers from making the choice to enter into direct transactions – very few businesses will want to make a choice today that can only take effect five years from now. Alternatively, the requirement could provide too **strong** an incentive for non-core customers to choose direct transactions at the outset of the new industry structure, and avoid coming under the five-year commitment. Moreover, a five-year "rolling" commitment would indicate that each year the customer

remains with the utility reinstates the 5-year commitment. That would mean that a 4-year notice to return to the competitive market would be required, at minimum.

AB 2006 would bar other innovative approaches to implementing a Core/Non-core market.

One such component, suggested by Commission staff in its recent report, “A Core/Non-core Structure for Electricity in California” would be to allow non-core customers to receive capacity services from the utility, but otherwise seek other options in the competitive market. Innovative measures such as this will be further discussed and developed from the Commission’s *en banc* hearing regarding a Core/Non-core model.

RELATED LEGISLATION

- AB 428 (Richman) would establish a core/non-core retail structure, pending in Senate Energy U&C Cmte.
- AB 816 (Reyes) would lift the current suspension on direct access transactions, pending in Senate Energy U&C Cmte.

LEGISLATIVE HISTORY

Asm. U&C: 8-2 (do pass) (4/19/04)

SUPPORT/OPPOSITION

Support: Access California Services; Affaitati LLC, San Bernardino; African Village Weekend Cultural & Performing Arts Inc.; African Village Weekend Inc.; Montclair Allied Perceptions LLC; Alta Med Health Services, Los Angeles; American Indian Chamber of Commerce of California; Antelope Valley Board of Trade; Antelope Valley Chamber of Commerce; Apex Computer Systems Inc., Cerritos; Arab American Business Magazine; *Armiji Newspapers*; Artesia Chamber of Commerce; Asian American Resource Center; Asian Business Association; Asian Business Association of Orange County; Asian Business League of Southern California; Asian Pacific Islander Small Business Program; Barstow Area Chamber of Commerce; Bell Gardens Association of Merchants and Commerce; Bellflower Chamber of Commerce; Berryman & Henigar, San Ana; Black Business and Professional Association, Inc.; Black Business Association; Black Chamber of Commerce of Orange County; California DVBE Alliance; California Black Chamber of Commerce; California City Economic Development Corporation; California Farm Bureau; California Labor Federation, AFL-CIO; California Senior Action Network Congress of California Seniors; California Veterans Stand Down Foundation; Cantamor Property Management, Inc., Downey; Carpinteria Valley Chamber of Commerce Carson African American Empowerment Coalition; Carson Chamber of Commerce Carson Dominguez Business Council; CEAC Veterans employment Committee Central City Association; Central City Company, San Bernardino; Central Courier, Inc., Ventura; Cerritos Chamber of Commerce; Chamber Business Services, Simi Valley; Chapman Communications, Palmdale; CHARO Community Development Group; Cheryl Brothers-Foundation Valley City Council Member; Chinese American Construction Professionals; City of Agoura Hills; City of Avalon; City of Compton; City of

Fillmore; City of Lancaster; City of Port Hueneme; City of Thousand Oaks; City of Tulare; Coalition of California Utility Employees; Community Financial Resource Center; Compton Community College District; Congress of California Seniors; Consumer Coalition of California; Consumer Coalition of California Consumers First; Corona-Norco Family YMCA; Costa Mesa Chamber of Commerce; Criss Art Inc.; Cudahy Chamber of Commerce; Daley Enterprises, Tulare; Dave's Automotive & Eager's Karting, Visalia; Dickerson Employee Benefits, Los Angeles; Doctors Ambulance Services; Doty Bros., Norwalk; East Los Angeles Chamber of Commerce; Elite Disabled Veterans Business Enterprise Network; Embracing Latina Leadership Alliances; ExPert, Inc.; Farmdale Creamery; FCI Management Consultants, Commerce; Fleming Associates, Corona; Food Industry and Business Roundtable; Frank C. Roberts-Mayor of the City of Lancaster; Future America; Garcia Architects, Inc.; Gary L. McGavin, AIA, Redlands; Gateway Chambers Alliance; Glaab & Associates, San Clemente; Goldmark Gallery & Portraiture, Corona; Graphic Press, City of Commerce; Greater Corona Hispanic Chamber of Commerce; Harbor Association of Industry and Commerce; Hendry Telephone Products, Goleta; Herman Weissker, Inc., Bloomington; High Desert Industrial Security Services, Apple Valley; Highland Area Chamber of Commerce; Holistic Healing for Youth, Redlands; Human Services Association; Huntington Library-Art Collections and Botanical Gardens; Icon Design & Planning Studio, Los Angeles; Ikerd Company, Newport Beach; IMED Data Search, Inc, Thousand Oaks; Inglewood/Airport Area Chamber of Commerce; Inland Action Inc., San Bernardino; *Inland Valley Daily News*; Inland Valley Economic Development Corporation; Inland Valley News; Irvine Chamber of Commerce; IW Group, Inc., Los Angeles; Jamco & Winnex, Inc., El Monte; Korean American Coalition-Orange County Chapter; Korean Youth & Community Center; Korean-American Federation of LA; La Casa de San Gabriel Community Center; La Puente Valley Regional Occupational Program; Laguna Beach Chamber of Commerce; Lakewood Chamber of Commerce; Lane Engineers, Tulare; Las Virgenes Water; District; Latin Business Association; Lomita Chamber of Commerce; Long Beach Area Chamber of Commerce; Los Angeles Urban League, Pasadena Foothill Branch; Los Angeles Eye Institute; Los Cerritos YMCA; LT Real Estate, Development; Mammoth Lakes Chamber of Commerce; Maywood Chamber of Commerce; McIntosh & Associations, Visalia; Meals on Wheels West; Merona Enterprises, Downey Mojave Valley United Way; Monte Vista Building Sites, Lancaster; Monterey Park Chamber of Commerce; Morena Valley Chamber of Commerce; Moreno Valley Hispanic Chamber of Commerce; Morris Communications, Los Angeles; Nakatomi & Associates; National Central for American Indian Enterprise Development; National Coalition of Hispanic Organizations; National Council of Negro Women, Inc.; National Gypsum; National Korean American Grocers Association; National Spa and Pool Institute, Region Nine; North San Diego County NAACP; One Source Distributors; Orange County Chinese-American Chamber of Commerce; Orange County Chinese American Chamber of Commerce; Palos Verdes Peninsula Chamber of Commerce; Pasadena NAACP; Pat Brown Institute of Public Affairs; Perera Construction & Design, Inc., Ontario; Planning and Conservation League; Pomona Chamber of Commerce; Premier Staffing Services; Premiere Staffing Service, San Diego; Quality Upholstering, Visalia; RDB Communications; Recycling Black Dollars; Red Tipi, Hacienda Heights; Res Com Pest Control; Rockview Farms, Downey;

Rockwell Scientific, Thousand Oaks; Rosemead Chamber of Commerce; Rubidoux Community Services District; San Bernardino Downtown Business Association, Inc.; San Gabriel Mountains Regional Conservancy; Search to Involve Pilipino; Americans; Seaside Graphics & Printing, Fountain Valley; Sempra Energy (support if amended); Sharon's Bookkeeping Service, Visalia; Sierra Wholesale Hardware, Inc., San Bernardino; South Orange County Regional Chambers of Commerce; Southeast Community Development Corporation, Pasadena; Southern California Edison; Southland Better Business Bureau; Southwest Power, Inc., Santa Fe Springs; Sullivan International, Inc., Long Beach; Tavis Smiley Foundation; The Greater Huntington Park Area Chamber of Commerce; The Greater Tulare Chamber of Commerce; *The Korea Daily*; Tidwell Excavating, Inc., Saticoy; Truline Golf, Visalia; Tualare Redevelopment Agency; Tualre Joint Union High School District; Tulare Improvement Program; Tulare-Kings Hispanic Chamber of Commerce; Turning Point of Central California; Ty's Diesel Air & Electric, Tulare; United Way of Corona-Morco; US Battery Manufacturing Co.; USAA Reality; Valley Reality; Ventura County Taxpayers Association-Visalia; Victor Valley Community Services Council; Victory Community Church-Pomona; Waste Resources Inc., Gardena; Waters & Faubel Inc., Lake Forest; Watts/Willowbrook Boys & Girls Club; Wayne Card Insurance, Fountain Valley; West Covina Chamber of Commerce; Westlake Village Homeowners Association; Whittier Area Chamber of Commerce; WRAP Family Services; Zona Seca-Lompoc

Opposition: California Wind Energy Association, Independent Energy Producers, La Paloma Generating Company

Oppose unless Amended: Alliance States Petroleum Association, APS Energy Services, California Biomass Energy Alliance, California Cogeneration Council, California Manufacturers and Technology Association, Calpine, Constellation Energy Group, Duke Energy, Strategic Energy, Economic Sciences Corp., The Utility Reform Network (TURN), Silicon Valley Manufacturers Group, Western States Petroleum Association

LEGISLATIVE STAFF CONTACT

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Date: April 20, 2004

BILL LANGUAGE:

BILL NUMBER: AB 2006 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 12, 2004

INTRODUCED BY Assembly Member Nunez

FEBRUARY 13, 2004

An act to add Article 17 (commencing with Section 400) to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 2006, as amended, Nunez. Electrical restructuring: Reliable Electric Service Act of 2004.

Under existing law, the Public Utilities Commission has regulatory authority over public utilities, including electrical corporations, and authorizes the commission to fix just and reasonable rates and charges. Under existing law, a public utility has a duty to serve, including furnishing and maintaining adequate, efficient, just and reasonable service, instrumentalities, equipment, and facilities as are necessary to promote the safety, health, comfort, and convenience of its patrons and the public. The existing Public Utilities Act requires the commission, pursuant to electrical restructuring, to authorize direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers to acquire service from certain electricity suppliers after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law.

This bill would establish a core and noncore model under which the utility's ~~duty to serve would extend to core customers and those noncore customers that~~ may

elect to receive ~~bundled~~ electric service from the electrical corporation *or from an electric service provider* . ~~The utility's duty to serve noncore customers that elect to purchase electricity through a direct transaction would exist for transmission and distribution electric service.~~ *An electrical corporation would have no obligation to procure electricity or otherwise meet resource adequacy requirements for noncore customers that elect to enter into a direct transaction for the purchase of electricity.* The bill would require electrical corporations to file, and for the commission to approve, ~~an integrated~~ a long-term resource ~~investment~~ plan, as specified, sufficient to fulfill the utility's duty to serve *while achieving best value for ratepayers* . The bill would provide for the recovery of costs and investments made pursuant to an approved ~~integrated long-term resource investment~~ plan. The bill would require that ~~a utility's bundled service customers be indifferent to no costs be shifted to the utility's core customers as a result of~~

the election by noncore customers to purchase electricity through direct transactions. The bill would require the commission, in consultation with the Independent System Operator, to establish resource adequacy requirements to ensure adequate ~~reserves~~ ~~of~~ physical generating capacity ~~are~~ *to meet peak demand plus requisite planning and operating reserves* is available to reliably serve all customers and would require the Independent System Operator ~~, consistent with federal law,~~ to implement and enforce these resource adequacy ~~and reserve~~ requirements in a nondiscriminatory manner on all load serving entities *, excluding a local publicly owned electric utility*. The bill would require the commission to adopt implementing rules and regulations.

A violation of the Public Utilities Act or an order of the commission is a crime under existing law.

Because a violation of the bill's provisions would be a violation of the act, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) An adequate and reliable supply of electricity is essential to the health, safety, and welfare of all California consumers.

(b) Safe, reliable, and affordable ~~, electric service~~ ~~that is environmentally sustainable,~~ *electric service* is of utmost importance to the consumers of this state and its economy.

(c) Electrical corporations have an obligation to ~~serve~~ *provide* their customers with reliable electric service at just and reasonable rates.

(d) In order to provide safe, reliable, and affordable electric service to consumers, electrical corporations must ~~invest in~~ *provide* needed resources, including *cost-effective energy efficiency and other demand reduction measures,* utility-owned and procured generation, new and repowered generation, ~~high efficiency~~ cogeneration, renewable generation, transmission, distribution, and ~~energy efficiency and other demand reduction measures~~ *an adequately sized, well trained workforce*, in a manner that produces the best value for ratepayers.

(e) In order to ensure that investments in resources are made in a manner that produces the best value for ratepayers, electrical corporations should prepare ~~an integrated resource investment~~ *a long-term resource plan* for commission review and approval, that achieves a diversified ~~, reliable, and environmentally sustainable~~ portfolio of efficient, cost-effective supply and demand resources.

~~(f) In order to ensure that an integrated resource investment~~

(f) In order to ensure that the long-term resource plan achieves a diversified portfolio of efficient, cost-effective supply and demand resources, resource adequacy requirements shall be met first through cost-effective energy efficiency and other demand reduction measures.

(g) In order to ensure that a long-term resource plan will result in investments in resources sufficient to provide reliable electric service to customers of an electrical corporation without stranding costs or shifting costs, a stable and predictable customer base is necessary and essential.

~~—(g)—~~

(h) In order to attract sufficient capital to make investments in needed resources, there must be assurance that reasonable costs and investments, including a return of and on direct investments, and ~~investments made by~~ payments made to third parties under contract with an electrical corporation for non-utility-owned generation, are recovered in rates.

~~—(h)—~~

(i) California consumers will not receive reliable and affordable electric service, nor will consumers avoid repetition of past problems with ~~volatile~~ excessive wholesale electricity prices, rolling blackouts, and long-term supply contracts that threaten consumers with billions of dollars in above-market electricity costs, unless a durable framework is enacted to support investment in needed resources ~~—, as soon as possible—~~.

SEC. 2. Article 17 (commencing with Section 400) is added to Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code, to read:

Article 17. Reliable Electric Service Act of 2004

400. This article shall be known, and may be cited, as the Reliable Electric Service Act of 2004.

400.1. (a) An electrical corporation has an obligation to ~~serve~~ provide the utility's ~~bundled~~ customers with reliable electric service at just and reasonable rates, pursuant to Section 451. ~~For purposes of this article, the utility's "bundled customers" means core customers and those noncore customers that commit to bundled service pursuant to this article.~~

~~—(b) The obligation to serve the utility's bundled customers includes the obligation to plan for, invest in, and provide adequate, efficient, and environmentally sustainable resources, including~~

(b) For purposes of this article, "electric service" includes providing adequate and efficient resources, including cost-effective energy efficiency and other demand response resources, utility-owned and procured generation resources, new and repowered generation resources, ~~high efficiency~~ cogeneration, renewable generation resources, transmission and distribution resources, ~~energy efficiency and demand response resources, and to employ an adequately sized, well trained utility workforce to provide these resources.~~

~~—(c) An electrical corporation has an obligation to serve noncore customers that elect to enter into direct transactions, with electric transmission and distribution service at just and reasonable rates, pursuant to Section 451.— metering, billing, and~~

employing an adequately sized, well trained utility workforce.

(c) Notwithstanding subdivisions (a) and (b), an electrical corporation has no obligation to procure electricity or otherwise meet resource adequacy requirements for any customer that elects to enter a direct transaction. No costs incurred by the electrical corporation to serve ~~noncore customers with electric transmission and distribution service~~ customers that have entered into a direct transaction , shall be shifted to the utility's bundled customers.

400.5. (a) To ensure that adequate investments are made in resources necessary to provide ~~consumers~~ customers with reliable electric service, the commission shall authorize an electrical corporation to ~~make investments in~~ provide efficient, cost-effective resources, including cost-effective energy efficiency and demand response resources, utility-owned and procured generation resources, new and repowered generation resources, ~~high efficiency cogeneration, renewable generation resources, transmission resources, and cost effective energy efficiency and demand response resources, consistent with the electrical corporation's approved integrated resource investment plan.~~ cogeneration, and renewable generation resources, consistent with the electrical corporation's procurement plan adopted pursuant to Section 454.4.

(b) The commission shall, after public hearing, approve and thereafter maintain just and reasonable rates sufficient to ensure that ~~reasonable investments~~ the electrical corporation fully recovers the cost of investments found reasonable by the commission in the resources necessary to provide ~~consumers~~ customers with reliable electric service, including a reasonable ~~return of and on investment, are fully recovered~~ opportunity to fully recover a reasonable return on investment over the life of the resource, ~~and that~~ in addition to costs reasonably incurred to operate and maintain those resources ~~are fully recovered~~ , on a timely basis.

(c) The cost recovery assurance for investments in resources applies to both of the following:

(1) Direct investments made by an electrical corporation.

(2) The electrical corporation's full costs of contracting for generation resources with another entity, including the cost of any collateral requirements and debt equivalence.

(d) Nothing in this article alters the requirements of Section 455.5, 463, or 1005.5.

400.10. (a) To ensure that adequate investments necessary to meet the electrical corporation's obligation to ~~serve bundled~~ customers are made, each electrical corporation shall, no later than July 1, 2005, and at least every three years thereafter, prepare an integrated resource investment plan to achieve a diversified, environmentally sustainable ~~provide reliable electric~~ service are made, every electrical corporation shall prepare a long-term resource plan in accordance with Section 454.5 to achieve a diversified portfolio of efficient cost-effective supply and demand resources to serve the utility's ~~bundled customers.~~ The integrated resource investment customers. The plan shall include demand and supply forecasts for 5-, 10-, and 15-year periods, and shall ensure that adequate resources are available to reliably serve the utility's ~~bundled customers.~~ ~~The process for utility selection and commission approval of these resources shall be designed to achieve best value for the utility's~~

~~bundled customers, by considering reliability, efficiency, cost effectiveness, system impacts, resource diversity, and risk. The commission shall review and approve, with such revisions as the commission deems necessary to implement the provisions of this article, an electrical corporation's integrated resource investment plan within 120 days of receipt.~~

~~—(b) The integrated resource investment plan shall provide for customers. The demand forecasts shall reflect energy efficiency programs approved by the commission. The commission shall, after public hearing, review and approve a long-term resource plan for every electrical corporation consistent with Section 454.5, including those revisions to the utility filed plan that the commission determines are necessary.~~

~~(b) The plan shall provide for investments in all practicable and cost-effective energy efficiency and demand response resources, including load management, that offer equivalent or better system reliability, equivalent or better environmental improvements, and equivalent or lower costs to ratepayers than supply alternatives.~~

~~—(c) The integrated resource investment plan shall provide for investments in renewable generation consistent with Article 16 (commencing with Section 399.11), provided that investments in renewable generation are made in furtherance of the goal of supplying 20 percent of an electrical corporation's retail sales from eligible renewable energy resources, no later than December 31, 2010.~~

~~—(d) (1) The integrated resource investment plan shall provide for investments, including extensions, renewals, or renegotiations of existing contracts, in new or repowered generation and high efficiency cogeneration projects. These resources may be obtained through investment by independent generators under contract with the electrical corporation, through a competitive procurement process or other process approved by the commission, consistent with Section 454.5, or from direct utility investment. To the maximum extent permissible under law, repowering and high efficiency cogeneration projects that offer equivalent or better system reliability, equivalent or better environmental benefits, and equivalent or lower costs to ratepayers than new generation, shall be given first consideration.~~

~~—(2) For purposes of this chapter, "high efficiency cogeneration projects" means a cogeneration project that can achieve thermal efficiencies greater than 75 percent and are used to meet the thermal requirements of continuous industrial or commercial processes.~~

~~—(3) For purposes of this chapter, "repowered generation" means a project for the modification of an existing generation unit of a thermal powerplant that meets all of the following criteria:~~

~~—(A) The project complies with all applicable requirements of federal, state, and local laws.~~

~~—(B) The project is located on the site of, and within the existing boundaries of, an existing thermal facility.~~

~~—(C) The project will not require significant additional rights of way for electrical or fuel related transmission facilities.~~

~~—(D) The project will result in significant and substantial increases in the efficiency of the production of electricity, including, but not limited to, reducing the heat rate, reducing the use of natural gas, reducing the use and discharge of water, and reducing air pollutants emitted by the project, as measured on a per kilowatthour basis.~~

~~—(e) The integrated resource investment plan shall provide for investments in new or expanded transmission facilities and control~~

~~systems that are needed to ensure efficient use and reliable operation of the electric grid for core and noncore customers, to facilitate the development of new, repowered, or renewable generation facilities, or to accommodate load growth. With respect to any new or expanded electrical transmission facility for which the Independent System Operator has made a determination that the project is needed to meet applicable reliability standards or to promote economic efficiency, that determination shall be conclusive for purposes of determining whether to issue a certificate of public convenience and necessity pursuant to Chapter 5 (commencing with Section 1001), and shall be included in the approved integrated resource investment plan.~~

~~— (f) (1) The integrated resource investment plan may provide~~

(c) The plan shall provide for investments in necessary generation resources, including extensions, renewal, or renegotiations of contracts for existing generation resources, new or repowered generation and cogeneration projects.

(d) (1) The plan may provide for investments in distributed generation ~~to~~ that would improve system reliability, thereby deferring or eliminating investments in distribution facilities that ~~are otherwise~~ would otherwise be needed to improve system reliability, by either direct investment by the electrical corporation or under contract with a third party, provided the electrical corporation finds that the investment in distributed generation would accomplish each of the following:

(A) Result in overall cost savings for ratepayers due to deferral or elimination of electric distribution projects.

(B) Provide the required reliability and operational characteristics to support adequate service reliability to customers in the affected area.

(2) In cases where the distributed generation is provided under contract with a third party to reduce distribution system loads, the third party must maintain physical assurance that the contracted load reduction will be available during all required time periods.

~~— (g) The integrated resource investment~~

(e) The plan shall provide for the continuation of the self-generation incentive program authorized pursuant to Section ~~379.5~~ 379.6 for ultraclean distributed generation, as defined in Section 353.2.

~~— (h) The integrated resource investment~~

(f) The plan shall provide that an electrical corporation shall meet the resource adequacy requirements, ~~owning or procuring sufficient electric~~ by owning or contracting for sufficient physical generating capacity to meet 100 percent of annual peak demand, plus requisite operating and planning reserve margins as determined by the commission, for the electric load served by the electrical corporation. For purposes of this article, "electric load served by the electrical corporation" does not include the electrical load of customers who elect to enter into a direct transaction.

400.15. (a) An electrical corporation's procurement plan approved by the commission pursuant to Section 454.5, shall ensure that the resource selection process for generation resources necessary to meet resource adequacy requirements achieves best value for ratepayers by considering price, reliability, stability, efficiency, cost-effectiveness, system impacts, resource diversity, and risk.

(b) In accordance with an electrical corporation's procurement

plan approved pursuant to Section 454.5, to meet resource adequacy requirements each electrical corporation shall manage a diversified portfolio of non-utility-owned generation under contract with the utility, and utility-owned generation, combining the potential benefits of a competitive wholesale market, including operating efficiencies and lower prices, with the stability of cost-of-service generation resources, to achieve best value for ratepayers.

(c) In order to meet resource adequacy requirements, each electrical corporation shall recommend for commission approval generation resources that provide the best value for ratepayers, consistent with all the following:

(1) The electrical corporation shall conduct competitive solicitations for nonutility generation, consistent with the electrical corporation's procurement plan approved pursuant to Section 454.5.

(2) The electrical corporation may enter into a bilateral contract for nonutility generation, consistent with the electrical corporation's procurement plan approved pursuant to Section 454.5. Prior to approving a bilateral contract for nonutility generation, the commission shall find that the contract is reasonably priced relative to a market-based benchmark.

(3) The electrical corporation may file for a certificate of public convenience and necessity for utility-owned generation, consistent with the electrical corporation's procurement plan approved pursuant to Section 454.5. Prior to approving the certificate of public convenience and necessity, the commission shall find that the utility-owned generation is reasonably priced relative to a market-based benchmark.

(d) For purposes of this article, "nonutility generation" means facilities for the generation of electricity, owned and operated by an entity other than an electrical corporation or an affiliate of an electrical corporation.

400.18. An electrical corporation shall invest in new or expanded transmission facilities and control systems that are needed to ensure efficient use and reliable operation of the electrical grid for customers. With respect to any new or expanded electrical transmission facility for which the Independent System Operator has made a determination that the project is needed to meet reliability standards or to promote economic efficiency, that determination shall be conclusive for purposes of determining whether to issue a certificate of public convenience and necessity pursuant to Chapter 5 (commencing with Section 1001).

400.20. (a) The Legislature finds and declares all of the following:

(1) To ensure that an electrical corporation can properly plan for and ~~invest in~~ provide resources to reliably serve its customers without stranding costs or shifting costs among customers, a stable and predictable customer base is necessary and essential.

(2) A core and noncore electric service model, under which an electrical corporation is required to provide ~~bundled~~ electric service to all core customers with a maximum peak demand of less than 500 kilowatts on a cost-of-service basis, while noncore customers with a maximum peak demand of at least 500 kilowatts, can elect to enter into a direct transaction to purchase electricity from a nonutility electric service provider, will, if properly structured, provide this stability.

(3) Under a properly structured core and noncore electric service model, a utility's ~~bundled service~~ core

customers are indifferent to whether or not a noncore customer elects to purchase electricity from an electrical corporation or through a direct transaction.

(4) To ensure indifference, the commission is required to prevent any shifting of costs to a utility's ~~customers receiving bundled service~~ core customers, from noncore customers that elect to purchase electricity through direct transactions.

(5) It is in the public interest to allow noncore customers that elect to purchase electricity through direct transactions, a safe harbor of limited duration during which they can receive electricity from an electrical corporation, provided the utility's ~~bundled service~~ core customers are indifferent to whether a noncore customer purchases electricity from an electrical corporation during the safe harbor period. To ensure indifference, a noncore customer should pay the higher of the incremental costs of additional short-term spot electricity procured or generated to serve them or the otherwise applicable tariff rate.

400.21. On or before December 31, 2005, the commission shall adopt rules and regulations to implement a core and noncore model that accomplish all of the following:

~~(a) An electrical corporation shall remain obligated to provide reliable bundled electric service to core customers that have a maximum peak demand of less than 500 kilowatts on a cost of service basis.~~

(a) Core customers, and noncore customers that do not elect to enter into a direct transaction pursuant to this section, shall receive reliable electric service from an electrical corporation on a cost-of-service basis.

(b) Noncore customers ~~with a maximum peak demand of at least 500 kilowatts~~ may elect to enter into a direct transaction with a nonutility electric service provider. The electric service provider shall be fully responsible for meeting the resource adequacy requirements of the electricity load ~~of~~ established by the commission for the customers it serves, and the ~~integrated resource investment~~ long-term resource plan of the electrical corporation shall exclude the resource adequacy requirements of the electricity load serviced by an electric service provider.

(c) A noncore customer that ~~elect to take bundled service from the electrical corporation~~ does not elect to enter into a direct transaction with a nonutility electric service provider shall be subject to a five-year rolling commitment to the electrical corporation.

(d) A noncore customer that elects to ~~purchase electricity through~~ enter into a direct transaction may thereafter receive default electric commodity service from the electrical corporation under terms established by the commission to ensure that ~~the utility's bundled service~~ customers are indifferent to whether the noncore customer purchases electricity from the electrical corporation during this safe harbor period. To ensure indifference, a noncore customer shall pay the higher of the incremental costs of additional short-term spot electricity procured or generated to serve the noncore customer or the otherwise applicable tariff rate.

~~(e) To ensure indifference, the commission shall adopt rules sufficient to avoid a shifting of costs to the utility's bundled~~

(e) The commission shall adopt rules sufficient to avoid any

shifting of costs to the electrical corporation's core customers that would result from noncore customers electing to purchase electricity through direct transactions. Noncore customers shall continue to pay those costs recoverable pursuant to subdivisions (d), (e), (f), and (g) of Section 366.2.

(f) The commission shall adopt rules that defer new elections to enter into direct transactions for the purchase of electricity by noncore customers until the commission has approved a cost recovery mechanism that ensures that new elections by noncore customers to purchase electricity through direct transactions will not result in the under recovery of any costs attributable to those noncore customers.

(g) Customers that are purchasing electricity pursuant to a direct transaction as of January 1, 2005, including customers that qualify as core customers, ~~pursuant to rules adopted by the commission,~~ may choose to continue to purchase electricity pursuant to ~~direct transaction or to return to bundled~~ *a direct transaction or to return to* service provided by the electrical corporation.

(h) *For purposes of this article, "core customer" means any customer with a maximum peak demand of less than 500 kilowatts.*

(i) *For purposes of this article, "non-core customer" means any customer with a single meter with a maximum peak demand of at least 500 kilowatts.*

(j) In designating the earliest possible date for implementation of a community choice aggregation program, the commission shall ensure that there will be no cost-shifting or stranding of investments made pursuant to ~~an integrated resource investment~~ *a long-term resource plan* of the electrical corporation that has been approved by the commission pursuant to Section 454.5 .

400.22. (a) All electrical load serving entities, including nonutility electric service providers and community choice aggregators, shall be subject to the same requirements for resource adequacy, resource diversity, *and the renewable portfolio standard,* ~~and demand response resources~~ as applicable to electrical corporations.

(b) The commission, in consultation with the Independent System Operator, shall establish resource adequacy requirements to ensure adequate ~~reserves of physical generating capacity are~~ *physical generating capacity to meet peak demand and planning and operating reserves,* is available to serve all customers reliably. ~~Consistent with federal law, the~~

The Independent System Operator shall implement and enforce these resource adequacy ~~and reserve~~ requirements in a nondiscriminatory manner on all load serving entities. *Load serving entities may procure physical generating capacity through a market-based mechanism. For purposes of this article, "load serving entity" does not include a local publicly owned electrical utility as defined in Section 9604.*

400.30. To ensure that the utility's obligation to ~~serve bundled~~ *provide* customers with reliable electric service at just and reasonable rates is met by an electrical corporation, the commission shall adopt rules and regulations consistent with the policies and provisions of this article. ~~Subject to judicial review as provided in this act, those actions undertaken by the commission pursuant to the provisions of this article are binding upon the commission, and modify, amend and supercede any other provisions of law, including Section 1708.~~

400.40. Nothing in this chapter shall alter or affect any outcome of a competitive procurement process conducted by an electrical corporation pursuant to any other law, including Section 454.5, prior to January 1, 2005.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.